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COMMITTEE AGAINST TORTURE

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SUMMARY RECORD OF THE 102nd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 20 November 1991, at 4 p.m.

Chairman: Mr. VOYAME

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The meeting was called to order at 4.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Supplementary report of Cameroon (CAT/C/5/Add.26) (continued)

1. At the invitation of the Chairman, Ms. Ngwanmessia, Mr. Engoute Assira and Mr. Sob (Cameroon) took places at the Committee table.

2. Mr. ENGOUTE ASSIRA (Cameroon), replying to the question Ms. Chanet had asked at the preceding meeting about the irremovability of judges, said that, in Cameroon, under the terms of the Constitution, the President of the Republic was the guarantor of the independence of judges. There was a Supreme Judicial Council, which handed down opinions, but the President was free not to take them into account. The Council was composed of nine members, three of whom were judges. The latter were therefore in the minority and it was sometimes difficult for them to assert their views. Although the judiciary regulations provided for the irremovability of judges, the situation in practice could be different because the regulations also provided for derogations from that principle owing to the exigencies of the service. Since that provision could be very widely applied, it was obvious that judges in Cameroon were in fact fairly mobile.

3. The Court of National Security had sole competence to try crimes and offences against the internal and external security of the State, unless such crimes and offences had been committed by minors under the age of 14. Its procedure was that followed in a court of first instance. It could issue a warrant of committal or arrest if the penalty handed down was one of imprisonment. It ruled in first and last instance and its decisions could thus be appealed only within a time-limit of 10 days.

4. Ms. Chanet and Mr. Voyame had said that it was unfortunate that the Cameroonian Penal Code did not contain a specific definition of the crime of torture. He pointed out that the situation could hardly have been otherwise, since the Penal Code had existed long before the Convention. Mental torture was therefore not punishable under Cameroonian law.

5. Ms. Chanet had also asked whether medical examinations were carried out by independent physicians and had said that she wished to know the period of time between two interrogations, whether interrogations took place in the presence of a lawyer and who appointed that lawyer. Unfortunately, the legislation in force did not contain any provisions on that subject, but changes to deal with that matter were included in the draft Code of Penal Procedure which was to be submitted shortly to the National Assembly. Detention incommunicado could not last more than 20 days. It was a measure that was rarely applied and it was therefore difficult to describe how it worked in practice. He nevertheless explained that the purpose of isolating the accused in a penal institution was to prevent the revelation of the truth from being jeopardized through contact by the accused with other persons. That was a measure which could be essential for the investigation.

6. It had been asked whether there were any mental and material obstacles to the supervision of police custody by judges. Mr. Voyame had clearly understood that the point at issue, couched though it had been in such euphemistic terms, was the liberty taken by the police, who sometimes even went so far as to object to judicial supervision. The fact was that, for several decades, the judicial police forces had been assigned to carry out investigation, crime prevention and law enforcement duties and, because of the power they wielded, their subordination to the judicial authorities could not always be guaranteed. Material obstacles had been described in the report; they were more noticeable than ever today because of the country's economic problems, which were so serious that police stations sometimes did not even have any paper.

7. With regard to the meaning of the words "to use force", as contained in article 137 of Decree No. 60/280 relating to the gendarmerie (para. 23 of the report), he said that, to his knowledge, they had never been interpreted by the courts and he could provide no further information on the subject.

8. As to extradition, the decree to carry it out was signed by the President of the Republic once the Court of Appeal had taken its decision; it should be assumed that, when taking that measure, he acted in keeping with the provisions of article 3 of the Convention, which formed part of national legislation on extradition.

9. With regard to the number of cases of compensation for victims of torture, he did not have any figures at present; the competent departments in the country would try to communicate them to the the Committee. As to the measures taken to punish excessive severity on the part of law enforcement officials in accordance with article 615 of the Code of Criminal Investigation, he agreed with Ms. Chanet that the explanations given in paragraph 84 of the report were not very clear.

10. He also agreed with Mr. Voyame that the instructions given to the police forces should take more account of the spirit and letter of the Convention and that they should expressly prohibit the use of violence in police premises. However, some of the provisions to which he himself had referred in his oral introduction at the preceding meeting were a step in that direction.

11. The extradition procedure involved arresting any person for whom a warrant of arrest had been communicated by the requesting State and bringing him before the Court of Appeal within eight days of his arrest. The Court of Appeal had eight days to decide on the admissibility of the request for extradition. If the request was found admissible, it was then for the President of the Republic to take the final decision concerning extradition.

12. The Committee had expressed its concern about the repeated extensions of the detention periods imposed by various authorities. That problem seemed to be the result of confusion between police custody and administrative detention. It was out of the question and legally impossible in the same case and for the same person to be held in police custody for 4 days and, then, for example, to be held for 10 days in detention incommunicado and for several days in administrative detention.

13. Mr. Khitrin had asked whether the Cameroonian Government could influence a decision of the Supreme Court or of other courts. In nearly 25 years on the bench, he personally had never received the slightest order from his Government. Pressure might, of course, be brought to bear, but that was done in more subtle ways, for example, through transfers.

14. Ms. NGWANMESSIA (Cameroon), replying to Ms. Chanet's question concerning the reform of the military courts, said that Act No. 90/048 of 19 December 1990 dealt with military justice. The Act provided for a number of reforms, one of the most important of which was the suppression of the crime of subversion, which had been an obstacle to freedom of expression. The military courts were competent to try cases of crimes committed by the military in the exercise of their duties; for example, they could try a soldier for disobedience. Civilians who were co-perpetrators or accomplices of an act committed by members of the military were not subject to the jurisdiction of the military courts.

15. With regard to the 60 persons who had been detained in 1984 without charges or trial, she recalled that the situation had been the result of an attempted coup d'Etat in April 1984. The persons who had committed massacres and acts of torture at that time had been tried in early 1991. The amnesty act adopted in 1991 had led to the release of a very large number of prisoners. The police record of the persons who had thus been released was now clean. It had been asked whether those prisoners could have benfited from the remedy of habeas corpus, which was provided for by law and available to everyone. The High Court was competent to hear such cases. Nevertheless, in order for an application for habeas corpus to be heard, it had to be filed by someone, such as a member of the prisoner's family.

16. She also wished to comment on the information provided by Amnesty International and submitted to the Cameroonian delegation at the preceding meeting. She recalled that Cameroon had proclaimed its intention of complying with article 5 of the Universal Declaration of Human Rights, article 7 of the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

17. Under article 23 of Decree No. 82/467 of 4 October 1982, moreover, Cameroonian judges were required to swear an oath and undertake to administer justice impartially and with dignity; that gave citizens some guarantees. In addition, articles 19 to 24 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment created obligations for States and for the Committee. The latter, for example, had the difficult task of obtaining accurate information on the actual situation in countries and of referring to it in the report it submitted to States parties and to the General Assembly. In order to supplement the information supplied to the Committee, she emphasized that, in the past two years, some persons had been inflicting cruel, inhuman and degrading treatment on others in the name of a multiparty system. For example, adolescents were given marijuana without knowing it and then committed atrocities and, in some "ghost towns", uncontrolled elements were depriving citizens of their freedom of movement. As far as the actual situation in Cameroon was concerned, she felt that the reports of Amnesty International were somewhat exaggerated. She had, for

example, read that Mr. Mazou had been listed as one of the persons who had allegedly died, whereas he was a colleague of the members of the Cameroonian delegation and very much alive.

18. The Government of Cameroon obviously regretted what had happened to the persons in detention and was taking measures to remedy such situations. Only a few weeks previously, it had ordered the Prosecutor of Douala to open an inquiry into the arrest of the persons listed in the Amnesty International report. Since then, most political party leaders, including one of the persons referred to by Amnesty International, had signed a peace agreement.

19. Some members of the Committee had asked why, since the Convention took precedence over national law, its provisions had not been incorporated into the country's legislation. The Constitution dated back to 1960 and it had been amended in 1972 and 1983. The Penal Code had been adopted in 1967. The provisions of the Convention could therefore not have been incorporated in the Constitution or the Penal Code. As already stated, however, many reforms were under way and the Government was determined to take account of and respect the provisions of all the conventions to which Cameroon was a party.

20. Several schools were making efforts with regard to the training of personnel, including the Senior Police School and the Yaoundé School of Medicine. All public officials responsible for inquiries, whether police or gendarmes, received instruction in the Penal Code. Forensic medicine was also taught. It was essential for doctors to be familiar with the provisions of the Penal Code in case they had to determine how serious a wound was, for example, because the judge sometimes had to decide on the basis of the medical report whether an offence had been committed and whether compensation should be awarded.

21. As to whether the Cameroonian courts could judge a foreigner who had committed an act of torture outside Cameroon (art. 5, para. 2 of the Convention), she said that such a possibility existed in that a list of crimes could be added to those provided for in article 10 of the Penal Code, for example, in multilateral treaties.

22. Considering that some detainees had died and others had gone blind as a result of their detention, it had been asked whether the prosecutor could visit prisons without notice and whether there was a commission on prison supervision. Under Decree No. 19/1459 of 8 November 1990, the Cameroonian Government had established the National Commission on Human Rights and Freedoms, which had broad powers. It could thus promote human rights and freedoms, hear denunciations, conduct inquiries and, if necessary, refer them to the competent authorities, propose human rights measures, gather international documentation on human rights and freedoms and possibly also coordinate NGO activities and maintain relations with United Nations bodies and other humanitarian associations.

23. One member of the Committee had asked who conducted the inquiry when the offender was a member of the police force. Inquiries were not conducted only by the police; they could also be carried out by gendarmes or examining magistrates. Most of Cameroon's international obligations were now

incorporated in the new Code of Penal Procedure. For example, whereas in the past an official report prepared by the police had been regarded as evidence in court, statements by police officers could now be challenged.

24. Ms. Chanet and Mr. Voyame had asked for the figures on cases of torture and penalties imposed on judicial police officers in Cameroon. She regretted that she did not have those figures with her. She could, however, say that, in 1990, for example, 72 police officers had been dismissed for having practised torture. There was one particular case that had been widely discussed: that of a police officer who had made illegal arrests in 1968, holding persons in detention for longer than allowed and extorting money from them. He had been tried and convicted. That example clearly showed that police officers could not carry out torture with impunity. Under the new Code of Penal Procedure that was being drafted, moreover, if a police officer was guilty of torture, the victim could have him brought to trial and obtain damages.

25. In reply to a question by Ms. Chanet and Mr. Mikhailov, who had asked whether the Cameroonian Government intended to open rehabilitation centres for victims of torture, she said that the Cameroonian Government did what it could as far as its meagre resources permitted: for example, in the event of mental torture, a victim requiring psychiatric care could be attended to in a centre in Yaoundé. There was also a centre in Yaoundé for cases of torture leading to any form of disability.

26. In reply to the question whether statements obtained by torture were admissible as evidence in court, she said that, under article 28 of the rules of evidence ordinance, any statement obtained without the consent of the person concerned - for example, by threat or promise - was inadmissible, provided it had been proved that the statement had been obtained against the will of the person concerned. Article 137 of the decree on penal procedure also required that, in criminal cases, solid evidence should be brought. As a general rule, it could be said that confessions obtained by torture were not admissible in court.

27. Mr. Voyame and Mr. Sørensen had asked whether a state of emergency was in force in Cameroon at the present time and, in general, under what circumstances the state of emergency could be proclaimed, under what terms and for how long. In that connection, she referred to Act No. 90/047 of 19 December 1990 on the state of emergency. Under article 1 of the Act, a state of emergency could be proclaimed in case of events which, on account of their nature and seriousness, assumed the proportions of a public disaster, in the event of disturbances which seriously threatened law and order or the security of the state or in the event of foreign aggression.

28. The procedure was established in article 2 of the Act: the state of emergency was proclaimed by a presidential decree, which specified the part or parts of the national territory subject to the state of emergency, the duration of the state of emergency, which could not exceed three months, and the administrative authorities empowered to take measures resulting from the proclamation of the state of emergency. If the situation which had led to the state of emergency continued to exist, the President of the Republic had to consult the National Assembly.

29. Mr. SOB (Cameroon), referring to another aspect of the emergency powers of the President of the Republic, said that article 11, paragraph 2, of the Cameroonian Constitution provided that, in the event of a grave threat to the territorial integrity, life, independence and institutions of the nation, the President could proclaim a state of emergency and, by decree, take any measures he deemed necessary. However, regulations had been adopted to ensure that the President did not take those measures lightly. He thus had to take account of the circumstances justifying those measures and must inform the nation in a message. To some extent, there were therefore guarantees restricting the use of the state of emergency.

30. A few days previously, the President of the Republic had established a commission to propose amendments to the Constitution in order to reflect the country's recent shift towards democracy. As a matter of priority, the commission would examine the emergency powers which article 11 vested in the President of the Republic. The members of the Committee should understand that all such measures, some of which were controversial and others were not, had been adopted by the single party, and that meant that errors were always possible. At present, Cameroon was feeling the effects of legislation that was beyond the Government's control.

31. With regard to the possibility of errors, Ms. Chanet had asked about the risks involved in the fact that the Cameroonian Government could leave a refugee in the care of a transporter when that refugee did not meet the conditions for entry into Cameroon. As a result, international regulations made provision for that eventuality, at least as far as transport by air was concerned. That provision, which was not in fact really on the statute books, but which formed part of the routine checks of immigration flows, made it possible to prevent economic migrants from settling in Cameroon under cover of refugee status. Where the persons concerned were really refugees, there was a complex, but accelerated procedure to determine whether they were entitled to reside in Cameroon; it enabled the Government to adopt a position vis-à-vis the Office of the United Nations High Commissioner for Refugees. In any event, any refugee who arrived in Cameroon and who had left his country suddenly because he had felt that his life was in danger was entitled to remain in Cameroon for 72 hours. In the meantime, a prompt procedure was established in cooperation with the local UNHCR representative and a provisional residence permit could be granted until the results of an in-depth inquiry had been made known.

32. It had been asked whether the diplomatic or consular representatives of the country of foreigners detained in Cameroon were informed of the detention of one of their nationals. Cameroon was a party to the Vienna Convention on Diplomatic Relations and implemented all the obligations deriving therefrom. In practice, a problem of communication arose in that regard, not only in Cameroon, but in all countries: when a national of a foreign country was detained for one reason or another - the justification for his detention was not at issue at that stage - some time elapsed before the information reached the Ministry of Foreign Affairs, which was the only body authorized to contact the diplomatic or consular authorities of the country in question. In any case, whenever the Ministry of Foreign Affairs of Cameroon had been informed that a foreigner was being detained, the diplomatic or consular authorities

had been contacted. In that context, in order to fill the gaps and speed up the procedure, a department had been set up to contact the immigration services in order to ascertain whether any foreigners were being detained.

33. In reply to Mr. Mikhailov, who had asked for further information on the method of electing the President of the Republic in Cameroon, he explained that the President was elected by universal suffrage, as were the deputies to the National Assembly. To date, elections had been held by the closed list system, but a special commission had recently been instructed to study which voting methods might best serve the interests of democracy during the forthcoming multiparty elections. He also pointed out that executive power was exercised mainly by the President of the Republic, according to the practice in all presidential or semi-presidential regimes. The judiciary had limited jurisdiction in specific areas. Measures which would guarantee greater independence for the judiciary were currently under study.

34. Ms. CHANET (Country Rapporteur) asked at what age minors could be brought before the Court of National Security. Referring to paragraph 16 of the report, she noted that the military courts were authorized to try only adult persons, in other words, persons over the age of 18. What was the situation with regard to the Court of National Security?

35. Concerning administrative detention as provided for by Act No. 90/047 of 19 December 1990 on the state of emergency, she asked whether that type of detention was authorized by a national law applicable to situations other than the state of emergency. She wished to know whether the emergency regime was still being applied in Cameroon at the present time.

36. Mr. ENGOUTE ASSIRA (Cameroon), replying to Ms. Chanet, explained that only minors over the age 14 could be tried by the Court of National Security. Furthermore, there was no law authorizing administrative detention outside of a state of emergency.

37. Mr. SØRENSEN said that he was still unclear about the present situation. Was the emergency regime still in force in some parts of the country and, if so, in which ones? Since the entry into force of Act No. 90/047 of 19 December 1990 on the state of emergency, had the emergency regime been applied in Cameroon and for how long? He also asked whether the regulations governing the treatment of detainees were applied when the state of emergency was proclaimed.

38. Ms. NGWANMESSIA (Cameroon) said that the state of emergency could be instituted only by decree and that it could not last more than three months. If the situation was such that an extension was necessary, a second decree had to be issued so that it could be applied for a further three months, on the understanding that it could be lifted at any time. Only the exceptional circumstances provided for in article 1 of the Act on the state of emergency could justify such a measure. However, no threat which was tantamount to foreign aggression, disturbances which seriously threatened law and order or State security or events which, on account of their nature and seriousness assumed the proportions of a public disaster appeared to affect Cameroon at the present time. Why then was the state of emergency being maintained?

39. As to whether a detainee had the right to communicate with his lawyer or to be examined by a doctor during a state of emergency, she pointed out that, apart from the emergency measures listed in article 27 of the report, the provisions of the Penal Code and of the Code of Penal Procedure were being applied normally and that justice was being administered according to the procedures provided for by law.

40. Mr. SORENSEN, referring to paragraph 27 (g) of the report, asked whether the seven days of police custody provided for by the Act on the state of emergency were governed by the ordinary provisions of national legislation. Was detention incommunicado, for example, authorized in connection with such police custody?

41. Mr. ENGOUTE ASSIRA (Cameroon) said that detention incommunicado, which could take place only in connection with judicial inquiry proceedings, was governed by very specific provisions that had nothing to do with emergency measures.

42. The meeting was suspended at 5.40 p.m. and resumed at 5.50 p.m.

43. Ms. CHANET (Country Rapporteur) paid a tribute to the efforts made by the members of the delegation of Cameroon to answer the many questions they had been asked, not only on the supplementary report, but also on the initial report submitted in 1989 by the Government of their country. She welcomed the commitment made by the Cameroonian authorities to cooperate more closely in the work of international human rights bodies and, in particular, their decision to set up the National Commission on Human Rights and Freedoms to hear and consider individuals' allegations of torture or ill-treatment. While those efforts were commendable, she called on the authorities to take advantage of the opportunity afforded by the current reform of the Penal Code to amend these provisions which still had deficiencies or to add new ones which would make it possible to prevent torture in Cameroon more effectively.

44. With regard to the duration of police custody as provided for by law, she said that periods of four or seven days, for example, were too long, especially if the person under surveillance was not allowed to communicate with a lawyer or to receive the visit of a doctor. The Cameroonian authorities would do well to consider the possibility, during the revision of the Code of Penal Procedure, of providing further guarantees for persons in police custody which would afford them better protection against abuses of power and ill-treatment. However important the revelation of the truth might be, it should not under any circumstances expose a person to ill-treatment.

45. Administrative detention should also be governed by a law guaranteeing the detainee the same rights as any person deprived of his freedom in connection with judicial proceedings.

46. With regard to the education and information of civilian or military law enforcement personnel, public officials, policemen and prison staff, as provided for in article 10 of the Convention, she pointed out that the advisory services of the Centre for Human Rights might help to formulate training programmes for the various categories of officials.

47. It would be also useful if the authorities of Cameroon could investigate every alleged case of torture, even when they might think that such allegations were exaggerated, if only to prove that they were completely unfounded.

48. In her opinion, conditions of detention in prisons should be looked into very carefully, especially if the Commission on Prison Supervision was, as the delegation of the Cameroon had suggested, inclined to be too lax.

49. She still had doubts about the liberal nature of the new legislation promulgated on 19 December 1990, such as Act No. 90/048 amending Order No. 72/5 of 26 August 1972 on the organization of the military courts, Act No. 90/058 amending Order No. 72/4 of 26 August 1972 and Act No. 90/047 on the state of emergency. Although attempted "subversion" was no longer an offence under the law, a "breach of State security" could always be invoked to bring a 14-year-old child to justice.

50. She regretted that the members of her delegation had not been in a position to provide information on the allegations of torture brought to the attention of Amnesty International and the Special Rapporteur appointed by the Commission on Human Rights to study the situation in Cameroon.

51. The CHAIRMAN, speaking in his capacity as Alternate Country Rapporteur, thanked the members of the Cameroonian delegation for the care they had taken in preparing such detailed replies in so short a time. Although some points still required clarification, the information contained in the supplementary report and the explanations given during the oral presentation reflected the willingness of the Cameroonian authorities to make progress towards democracy, which was the only system that could ensure full respect for human rights.

52. The explanation given by the members of the Cameroonian delegation for the gaps which still remained in national legislation had not convinced him. The laws promulgated before the ratification of the Convention should have been amended before Cameroon had acceded to that international instrument. The fact that they had existed first could not be advanced as an argument to justify their shortcomings and their lack of conformity with the provisions of the Convention.

53. He was sceptical about the information supplied concerning the division of powers: the independence of the judiciary vis-à-vis the Executive did not seem to be sufficient.

54. Like Ms. Chanet, he regretted that the members of the Cameroonian delegation had been unable to provide any clarification of the allegations of torture transmitted by Amnesty International. The fact that they found them exaggerated would indicate that they disagreed with them, but they should have said why. He pointed out that, under article 2 of the Convention, "No exceptional circumstances whatsoever ... may be invoked as a justification of torture". Any allegation of ill-treatment should therefore be thoroughly investigated.

55. He also pointed out that some questions had not been answered. The periodic report that the Cameroonian authorities had undertaken to submit in 1992 should give them an opportunity to provide the information requested, particularly about the deficiencies which still existed in their national legislation. The advisory services of the Centre for Human Rights could help them in the reform of their institutions by indicating what measures they should take to ensure that the provisions of the Convention were applied more rigorously. Mr. Dipanda Mouelle, who had a position of great responsibility in Cameroon, would not fail, in his capacity as a member of the Committee, to offer them practical assistance for that purpose. The seriousness, competence and rigour with which he had discharged his duties in the Committee had earned him the respect and admiration of those who had worked together with him to defend human rights. His skill would certainly help Cameroon to close the gap between national legislation and the provisions of the Convention.

56. Mr. MIKHAILOV said that he agreed with the recommendations made by the Country Rapporteur and the Alternate Country Rapporteur indicating to the Cameroonian Government the direction its efforts should take. In that connection, he paid a tribute to the great progress Cameroon had made since its accession to independence in 1960. He also welcomed the measures taken since 1989 when the Cameroonian authorities had submitted their initial report, and he sincerely hoped that the next periodic report to be submitted in 1992 would allay the concerns that still remained about the full implementation of the provisions of the Convention in the country.

57. The CHAIRMAN said that it was not for the Committee to judge or condemn the practices of a State party; it must, rather, help it to bring its legislation into line with the provisions of the Convention. If he heard no objection, he would take it that the Committee endorsed the conclusions of the Country Rapporteur and the Alternate Country Rapporteur.

58. Mr. ENGOUTE ASSIRA (Cameroon) thanked the members of the Committee for their very wise advice, which would certainly help to fill the gaps which still existed in Cameroon's legislation and monitoring machinery. He noted with satisfaction that the services of the Centre for Human Rights could be called upon in the formulation of more effective training programmes. On behalf of the members of his delegation, he commended the members of the Committee for their dedication in performing the functions which had been entrusted to them and which were so austere and yet so constructive.

59. Ms. Ngwanmessia, Mr. Engoute Assira and Mr. Sob (Cameroon) withdrew.

The meeting rose at 6.10 p.m.